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of the Pittsfield Franchise Ordinance No. 1264 adopted May 28, 2002 because CIPS would not agree that the Ordinance was valid. As a result of a hearing on Count XIII entitled Request for Declaration of Rights Pursuant to 735 ILCS 5/2-701 of City of Pittsfield Ordinance No. 1264, held September 19, 2002, an Order was entered by the Circuit Court of Pike County, Illinois, based upon the representations of CIPS through its counsel that CIPS was not asserting the invalidity of Ordinance No. 1264, that the Ordinance was presumed valid. A copy of such Order entered September 30, 2002 is attached hereto as Exhibit 1.

3. IREC has always maintained that Ordinance No. 1264 is valid and in effect and the only reason the request for a declaration as to the validity of Ordinance No. 1264 was filed was because of CIPS' unwillingness to admit to the validity thereof.

4. There is no mixed question of fact and law with regard to the effect of the issuance of Ordinance No. 1264 on IREC's service rights to the territory in question in this docket. CIPS fails to mention what fact is in question or what law remains uncertain. The following facts are definite and certain:

(a) The Service Area Agreement is in existence between CIPS and IREC and has been approved by the Commission.

(b) The Service Area Agreement allocates the service territory in question to IREC for purposes of providing all of the electric service thereto.

(c) The territory in question has been annexed by the City of Pittsfield.

(d) The City of Pittsfield has adopted affective May 28, 2002 an Ordinance granting authority to IREC to utilize the public streets and ways and otherwise provide electric service to the territory in dispute in this docket.

(e) Ordinance No. 1264 is valid and the Circuit Court of Pike County, has found no reason to presume otherwise.

(f) The Circuit Court of Pike County has found that CIPS is not questioning the validity of Ordinance No. 1264 and that IREC is not questioning the validity of Ordinance No. 1264.

(g) The Service Area Agreement specifically provides as pointed out by IREC in its Motion for Judgment that IREC may continue to serve the territory in dispute in this case even though annexed provided IREC has or does subsequent to annexation obtain authority from the City of Pittsfield therefore.

(h) There is no provision in the Service Area Agreement that specifies that such authority must be obtained within a certain period of time subsequent to annexation in order for IREC to retain its rights to serve the territory in dispute in this docket. Further, CIPS points to no provision of the Service Area Agreement or any provision in law that would require IREC to obtain such authority within a certain period of time.

5. *The Service Area Agreement between IREC and CIPS is in fact applicable to the instant case. Paragraph 6 of the Service Area Agreement unambiguously states that should territory delineated by the Agreement to be served by IREC be annexed by Pittsfield, IREC can continue to serve the annexed territory provided IREC qualifies under the provisions of Section 14. Further, Section 14 (iii) of the ESA unambiguously states that IREC may serve the annexed premises if IREC has authority or "...shall become authorized so to do by the incorporated municipality."* The Service Area Agreement must be read in a manner so as to construe all of its provisions and to maintain the validity of such Service Area Agreement. As noted by the court in Rural Electric Convenience Cooperative Co., v. Illinois Commerce

Commission 75 Ill App 2d 142; 387 NE 2d 670; 25 Ill Dec 794, 797 (1979) there are well established principles of contract interpretation. The court in Martindell v. Lake Shore National Bank 15 Ill 2d 272 (1958) noted these principles at page 283:

“A contract, however, is to be construed as a whole, giving meaning and effect to every provision thereof, if possible, since it will be presumed that everything in the contract was inserted deliberately and for a purpose. (*Hartley v. Red Ball Transit Co.* 344 Ill. 534). The intention of the parties is not to be gathered from detached portions of a contract or from any clause or provision standing by itself, but each part of the instrument should be viewed in the light of the other parts. *Chicago Home for Girls v. Carr*, 300 Ill. 478; 12 I.L.P., Contracts, sec. 215.”.

Courts have consistently followed these principles holding that contracts must be viewed as a whole by viewing each part in light of the other Board of Trade of the City of Chicago v. Dow Jones & Co., Inc. 74 Ill Dec 582; 456 NE 2d 84; 98 Ill 2d 109 (1983); Asher v. Farb Systems, Inc. 256 Ill App 3d 792; 630 NE 2d 443; 196 Ill Dec 508, 510 (1st Dist. 1993); City of Chicago Heights v. Crothy 287 Ill App 3d 883; 679 NE 2d 412; 223 Ill Dec 227 (1st Dist. 1997). Nothing in the Service Area Agreement prohibits IREC from obtaining the franchise/authority from the City of Pittsfield subsequent to the annexation thereof. Likewise nothing in Section 14 prohibits IREC from obtaining authority from Pittsfield post the annexation and in fact encourages the obtaining of such authority by reason of the language “...or shall become authorized...”

6. CIPS maintains that Section 14 (iii) is not applicable because IREC’s 1965 delivery point (where the transformer was located for the pre 1965 electric service) was not annexed by Pittsfield. This argument becomes irrelevant and moot once Pittsfield grants IREC its authority to serve the annexed premises. Both paragraph 6 of the Service Area Agreement and Section 14(iii) speak of the right to serve the area annexed by reason of IREC obtaining the

authority from Pittsfield to utilize the streets and public ways. This IREC has done and thus CIPS' argument that Section 14 (iii) cannot be relied upon by IREC is irrelevant.

7. The issue of service rights to the annexed premises is moot by reason of the franchise granted IREC by Pittsfield which among other things authorizes IREC to use the streets and public ways to provide electric service in the annexed area. The service issue is now moot because:

(a) The Service Area Agreement and maps clearly and unambiguously delineates the annexed area as IREC's service territory.

(b) The Service Area Agreement and maps have been approved by the Commission.

(c) Paragraph 6 of the Service Area Agreement is unambiguous and clearly allows IREC to obtain the necessary franchise authority post annexation of the area.

(d) Section 14 (iii) clearly and unambiguously allows IREC to obtain the necessary franchise authority post annexation of the area.

(e) CIPS does not question the validity of IREC's franchise authority and the Pike County Circuit Court has ruled that franchise Ordinance No. 1264 is presumed valid. Where there is no existing controversy and nothing remains to be decided the issue is moot. Likewise where the issue of service to the annexed area in question will not again arise or be capable of repetition or the issue will evade decision or review, the issue becomes moot Illinois Bell Telephone Co. v Illinois Commerce Commission 67 Ill App 3d 616; 385 NE 2d 159; 24 Ill Dec 393 (4th Dist. 1979).

8. CIPS cites no factual distinction nor authority for its position that IREC has not met the conditions of paragraph 6 of the Service Area Agreement. Therefore by virtue of the

contractual arrangements between IREC and CIPS as approved by this Commission, IREC is entitled to provide all of the electric service to the territory in dispute in this docket.

WHEREFORE, IREC requests the following relief from the Illinois Commerce Commission:

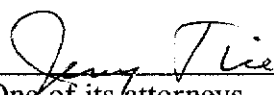
A. To determine that IREC is entitled to provide electric service to the Root premises pursuant to the Service Area Agreement between IREC and CIPS and pursuant to the Franchise Ordinance No. 1264, adopted by the City of Pittsfield May 28, 2002 and accepted by IREC June 3, 2002.

B. To grant the prayer of relief of IREC in Count III of its Amended Complaint and to deny the prayer for relief of CIPS in its Answer and Affirmative Defenses thereto and prayer for relief of CIPS in its Counter Claim.

C. For such other relief as the Commission deems just and equitable.

ILLINOIS RURAL ELECTRIC CO.,
Complainant,

By: GROSBOLL, BECKER, TICE & REIF and
ROBERT V. BONJEAN

By: 
One of its attorneys

PROOF OF SERVICE

I, JERRY TICE, hereby certify that on the 11 day of October, 2002, I deposited in the United States mail at the post office at Petersburg, Illinois, postage fully paid, a copy of the document attached hereto and incorporated herein, addressed to the following persons at the addresses set opposite their names:

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Mark Stern
Sorling, Northrup, Hanna,
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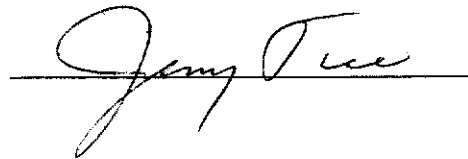
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A handwritten signature in cursive script, reading "Jerry Tice", is written over a horizontal line.